APPENDIX A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 80-5959

MARGARET W. FORD,
as Administratrix & Personal Representative of
Estate of James Edward Ford, Deceased, *et al.*,
Plaintiffs,

v.

WALLACE WOOTEN,
Individually and as father and next friend of
August Mark Wooten, a minor,
Defendant/Third-Party Plaintiff/Appellant,

v.

AMERICAN MOTORISTS INSURANCE COMPANY,
Defendant/Third-Party Defendant/Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

July 26, 1982

Before *Godbold,* Chief Judge, *Anderson,* Circuit Judge, and *Hoffman**, District Judge.

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* Honorable Walter E. Hoffman, U.S. District Judge for the Eastern District of Virginia, sitting by designation.

WALTER E. HOFFMAN, District Judge:

This case comes before us on Wallace Wooten's appeal from the entry of summary judgment against him on his amended cross-claim against American Motorists Insurance Company (hereinafter American). The issue presented by the cross-claim is one of coverage under a homeowners insurance policy issued to Wooten by American. The original plaintiff, Margaret Ford, is not a party to this appeal; nor was she a party to the former appeal referred to *infra*.

Margaret Ford brought this action to recover for the death of her 17-year old son, James Edward Ford. At the time of his death, James Ford was a guest on a boat owned by Wallace Wooten. The decedent had accompanied Wooten and his 16-year old son, Mark, on a sailing trip to the Bahamas. During that trip, Wallace Wooten returned to Fort Lauderdale for personal reasons, leaving the boat under the control of the two boys, who apparently were good sailors. Subsequently, while skin-diving away from the sailing vessel, near the Bahamas, James Ford drowned.

Margaret Ford originally brought this action for wrongful death under the Death on the High Seas Act (DOHSA), 46 U.S.C. §§ 761-767. The trial court later permitted plaintiff to amend her complaint by adding a claim under general maritime law for loss of society. Florida's direct action statute permitted Ford to sue American in the same suit. Count I alleged a cause of action in negligence under DOHSA. Count II alleged a cause of action of general maritime law under DOHSA. Thereafter, Wooten attempted to file a cross-claim against American in order to determine coverage under the homeowners insurance policy. Because of the untimeliness of the cross-claim, however, the district court

struck it and indicated that the coverage issue should be determined in a separate action.

After a non-jury trial, the trial judge dictated his findings of fact and conclusions of law into the record. On the claim under general maritime law, the court found that the unseaworthiness of Wooten's vessel due to the inadequacy or incompetence of the crew was a contributing cause of Ford's death. The court found the damages under this claim to be $24,877 for pecuniary loss, $50,000 for loss of society, and $780.13 for funeral expenses. These amounts were reduced by fifty percent, however, because of the decedent's contributory negligence. As to plaintiff's DOHSA claim, the court found that Wallace Wooten's negligence in leaving his son and James Ford without adequate supervision was a contributing cause of Ford's death. The court further found the pecuniary damages to be $24,877, which sum also was reduced by fifty percent due to decedent's contributory negligence.

Despite having struck Wooten's cross-claim, the trial court did address the insurance coverage issue in an attempt to facilitate later application of the coverage solution to the judgment already rendered. Noting that Wooten's homeowners policy contained an exclusion for any claims "arising out of ownership, maintenance, operation, use, loading or unloading of any watercraft: (1) owned by or rented to any insured if the watercraft . . . is a sailing craft . . . 26 feet or more in overall length," the Court correctly found that Wooten's vessel was longer than 26 feet. The court then concluded that, because Ford's general maritime claim depended on the unseaworthy condition of the boat, the claim arose from ownership of the vessel, thus falling within the policy exclusion. As to Ford's DOHSA claim, however, the

court found the exclusion inapplicable because the action was grounded on Wooten's negligence applicable to a situation away from the sailing vessel, rather than unseaworthiness. Accordingly, judgment was entered against American only for the $12,438.50 awarded on the DOHSA claim. Against Wallace Wooten, judgment was entered for the full $37,828.56.

An appeal brought by Wooten was subsequently dismissed by a panel of the old Fifth Circuit. *Ford v. Wooten,* 549 F.2d 201 (5th Cir. 1977) (unpublished). That court held that any argument concerning the $12,438.50 judgment against American had been mooted by American's intervening payment of the judgment. As to the remainder of the judgment against Wooten, however, the court concluded that the district court had erred in striking the cross-claim that would have determined the coverage issue, perhaps because without the cross-claim there was a serious question as to Wooten's standing to appeal. Therefore, the Court of Appeals remanded the case for final determination on questions of coverage.

On remand, the district court granted American's motion for summary judgment on the amended cross-claim, stating:

> The Amended Cross-claim involved herein stems from Count Two of the Complaint, where [*sic*] is clearly based upon Plaintiff's unseaworthiness claim for recovery against Defendant, Cross-Plaintiff WALLACE WOOTEN. This is so reflected in the trial judge's findings of fact and conclusions of law, which were not challenged upon appeal to the United States Court of Appeals for the Fifth Circuit. Under the unseaworthiness doctrine, underlying negligence is not the basis of liability. It thereupon appears that the American Motorists Insurance

> Company personal liability insurance policy exclusion for any claims arising out of the Defendant WALLACE WOOTEN's ownership, maintenance, operation or use of a sailboat more than 26 feet in length applies to this matter and precludes coverage herein.

We agree with the conclusion of the district court and accordingly affirm.

The damages awarded by the district court in this action are of two types: (1) damages for pecuniary loss, which are recoverable under both DOHSA and general maritime law; and (2) damages for loss of society and funeral expenses, which may be recovered only under general maritime law. American has paid the judgment for pecuniary loss to plaintiff. Therefore, only the damages for loss of society and funeral expenses are at issue here.

Before proceeding further, we note the unique procedural posture of this case. After the district court awarded damages and after the decision of the old Fifth Circuit, the Supreme Court handed down its decision in *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 98 S. Ct. 2010, 56 L. Ed. 2d 581 (1978). That case held that damages for loss of society may not be recovered under general maritime law in suits to which DOHSA is also applicable. Thus, the damages awarded by the trial court for loss of society could not now be awarded if this case were to be tried again. That issue is not presented here, however; the original plaintiff is not even before this court. The propriety of the damage awards in this suit was finally determined by the trial court and was not disputed on appeal to the old Fifth Circuit. Therefore, we are now faced only with the issue of insurance coverage of the damages previously awarded.

Under the terms of Wooten's insurance policy, damages arising from the ownership or operation of his boat were not covered by the insurer. The trial court concluded that Wallace Wooten's negligence in leaving the two boys without adequate supervision did not arise from ownership or operation of the vessel, but that the unseaworthy condition did. Appellant's sole contention is that plaintiff's claim under general maritime law was not restricted to a claim of unseaworthiness, but encompassed negligence as well. Wooten argues that, as a matter of law, the district court erred in concluding that the general maritime law only permits an action for wrongful death based on an unseaworthiness theory.

We question whether an issue concerning the theoretical basis for the judgment entered between Wooten and the original plaintiff is now before us. The remand from the old Fifth Circuit was for "further proceedings and for entry of a final judgment on questions of coverage between Wooten and American Motorists."[1] Even

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[1] The express wording of the Fifth Circuit's unpublished opinion seems to restrict the issues on remand to a determination of insurance coverage for the damages awarded to the plaintiff. Arguably, however, that opinion should be more broadly interpreted in light of Wooten's argument on his first appeal. In the conclusion to his opening brief in that appeal, he stated:

> The Trial Judge erred in not finding that the negligence he found under the DOHSA, covered by the COMPANY, was also encompassed by the MORAGNE REMEDY. Judgment should have been given against the COMPANY for damages for loss of society as well as pecuniary damages.

Thus, in seeking a determination of the coverage question, Wooten indicated that the issue of the theoretical basis for the recovery was interwoven with the coverage question. The short opinion of the Fifth Circuit did not specify whether the additional issue of the basis for recovery should be treated as part of the coverage question on remand. Our hesitancy to consider the basis for

[footnote continued]

assuming that the underlying theoretical questions are presented, we are not able to agree with Wooten's contentions. In asserting that the trial court erred in concluding that general maritime law only permits an action for wrongful death that is caused by unseaworthiness, appellant relies on the following language from the findings that the court dictated into the record.

> Because the general maritime recovery hinges upon the condition of the vessel itself, that is, the unseaworthiness of the PHYTARUS, this Court finds that the plaintiffs' general maritime claim is a claim arising out of the ownership of a sailing vessel 26 feet or more in length and, therefore, is a claim which is excluded under the policy of insurance.

We are not totally convinced that this language does indicate, as appellant contends, that the trial court concluded *as a matter of law* that only unseaworthiness supports a recovery for wrongful death under general maritime law. The court's oral findings are susceptible to an alternative interpretation—the court may have found that the *facts* of this case did not support a general maritime law recovery for wrongful death caused by negligence.[2]

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recovery in the absence of the plaintiff would be significantly lessened by the fact that the total amount recovered by the plaintiff would not be affected by a determination of the theoretical basis for that recovery. At oral argument, we were told that Wooten had paid the judgment against him, less a credit for the amount paid by American under the judgment entered on Count I.

[2] Appellant has argued that the trial court's finding of negligence, which was made in the DOHSA context, is equally applicable to the general maritime claim. Although we do not decide the issue, we have reservations about the validity of this proposition. First, *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S. Ct. 1772, 26 L. Ed. 2d 339 (1970), which established a cause of

[footnote continued]

Even if we assume that the district court did conclude as a matter of law that general maritime law permits a recovery for wrongful death only on the basis of unseaworthiness, we do not believe that conclusion to be erroneous. *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S. Ct. 1772, 26 L. Ed. 2d 339 (1970), first established a cause of action under general maritime law for wrongful death due to breach of maritime duties. In that case, plaintiff had made claims under both negligence and unseaworthiness theories, but the trial court dismissed the unseaworthiness claim. Thus, the Supreme Court's opinion, which mentioned unseaworthiness but never expressly discussed negligence, pertained only to an unseaworthiness claim. Moreover, subsequent Supreme Court cases have indicated that *Moragne* applied the wrongful death remedy only where death resulted from unseaworthiness. *See, e.g., Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 574, 94 S. Ct. 806, 809, 39 L. Ed. 2d 9 (1974).

The question we consider, then, is whether *Moragne* should be extended to permit recovery under general maritime law for wrongful death caused by negligence. *Ivy v. Security Barge Lines, Inc.*, 606 F.2d 524 (5th Cir. 1979) (en banc), *cert. denied*, 446 U.S. 956, 100 S. Ct.

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action under general maritime law for wrongful death, specified that the action was for "death caused by violation of maritime duties." *Id.* at 409. We are not certain that the negligence found by the trial court in this case—leaving the boys on board the boat without adequate supervision or limitations on their activities—is a breach of a *maritime* duty. Second, *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 93 S. Ct. 493, 34 L. Ed. 2d 454 (1972), indicates that admiralty jurisdiction, as indicated by the relationship of a tort to "traditional maritime activity," may be broader under DOHSA than in other contexts. *Id.* at 262-64, 271 & n.20, 93 S. Ct. 501-02, 506 & n.20.

2927, 64 L. Ed. 2d 815 (1980), considered this exact question, but in a slightly different context. Therein, the Court of Appeals determined the applicability of a general maritime law remedy for negligently induced wrongful death where a cause of action for negligence also exists under the Jones Act, 46 U.S.C. § 688. The court concluded:

> *Moragne* did not create or even discuss an action for negligence; it dealt only with death occasioned by unseaworthiness. The suggestion that the Jones Act measure of damages can be *supplemented* by the *Moragne*-cause-of-action-*Gaudet*-damages rule will not bear analysis; that hybrid could be spawned in but one context, the coupling of unseaworthiness (capable of producing *Gaudet*) with a Jones Act claim to give birth to Jones Act damages for negligence. To consider the *Moragne-Gaudet* result a supplemental remedy to the Jones Act when the suit is for negligence only is not to supplement the statute but to alter the interpretation it has continuously received.

606 F.2d at 527 (footnote omitted). We consider *Ivy* highly persuasive, and see no reason to distinguish it simply because it related to the interaction of the Jones Act with general maritime law, whereas the present case relates to the interaction of DOHSA with general maritime law. As with the Jones Act, "supplementation" of DOHSA's pecuniary loss remedy with the *Moragne* loss-of-society remedy would totally alter the remedial scheme, which already provides a cause of action for death due to negligence. In fact, this logic provided the basis for the holding in *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 98 S. Ct. 2010, 56 L. Ed. 2d 581 (1978).[3]

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[3] We do not rely on *Higginbotham*'s holding because of the procedural stance of this case. *Higginbotham* held that no general

[footnote continued]

The only other case that we have found which discusses the possibility of an action under general maritime law for wrongful death caused by negligence is *Nelson v. United States*, 639 F.2d 469 (9th Cir. 1980).[4] That court held that "the need for uniformity in maritime wrongful death actions requires extension of *Moragne* to cover claims based on negligence, to the exclusion of state wrongful death statutes." *Id.* at 473. We recognize that such extension of the *Moragne* remedy would ensure uniformity that otherwise would not exist in those wrongful death cases that fall outside of DOHSA and the Jones Act. As indicated by *Ivy*, however, such application of the *Moragne* remedy creates inconsistency with those two federal statutes. At least where statutory remedies exist, we deem consistency with the federal remedial schemes to be more important than the some-

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maritime law damages are available, even under an unseaworthiness theory, where DOHSA is also applicable. In this case, however, a final judgment was rendered under general maritime law for death due to unseaworthiness, and the validity of that damage award is not in issue here. We hesitate to apply *Higginbotham* now to preclude only general maritime damages caused by negligence. Moreover, if the trial court originally had permitted Wooten's cross-claim, as the Fifth Circuit ruled should have been done, *Higginbotham* would have come down too late to affect this decision. In light of these anomalies, we do not simply apply *Higginbotham*; rather, we rely on *Ivy*, which specifically held that wrongful death due to *negligence* was not even actionable under general maritime law.

[4] Certain language in *Law v. Sea Drilling Corp.*, 523 F.2d 793 (5th Cir. 1975), cited by appellant, does suggest that wrongful death caused by negligence is actionable under *Moragne*. *See id.* at 796. That language, however, lies within an extensive quotation from Gilmore & Black's *The Law of Admiralty*, which the court cited for an entirely different proposition. Therefore, we do not consider *Law* to have adopted Gilmore & Black's unsubstantiated assertion that negligence is actionable under *Moragne*.

what limited loss of uniformity. Therefore, we hold that where a cause of action exists for wrongful death under DOHSA, no additional action exists under general maritime law for wrongful death caused by negligence; the *Moragne* remedy applies only to unseaworthiness.

Having concluded that the trial court did not reach an erroneous legal conclusion, we AFFIRM.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 75-301-Civ-SMA

Margaret W. Ford, as Administratrix and Personal Representative of the Estate of James Edward Ford, Deceased;
Edward F. Ford and the Estate of James Edward Ford, Deceased,

Plaintiffs,

v.

Wallace Wooten, individually, and as father and next friend of August Mark Wooten, a minor, and
American Motorists Insurance Company,

Defendants.

ORDER GRANTING DEFENDANT AMERICAN MOTORISTS' CROSS-MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT WOOTEN'S MOTION FOR SUMMARY JUDGMENT

November 5, 1980

THIS CAUSE came on to be heard on November 3, 1980, upon cross-motions for summary judgment on Count One of Defendant, Cross-Plaintiff Wallace Wooten's Amended Cross-claim against Defendant, Cross-Defendant American Motorists Insurance Company. The Court has studied the Motions submitted by the parties, their

memoranda of law and the issues raised therein. The Court has also reviewed applicable portions of the Record, specifically including the trial judge's findings of fact and conclusions of law. The Court has studied the Opinion and Mandate of the United States Court of Appeals for the Fifth Circuit in this Cause. From the foregoing, and from the argument of Counsel in open court, the Court concludes that there is no genuine issue of material fact that remains in dispute in this Cause. Thereupon, it is accordingly

ORDERED AND ADJUDGED as follows:

1. Defendant, Cross-Plaintiff Wallace Wooten's Motion for Summary Judgment as to Count One of the Amended Cross-claim is hereby denied.

2. Defendant, Cross-Defendant American Motorists Insurance Company's Cross-motion for Summary Judgment as to Count One of the Amended Cross-claim is hereby granted. The costs of this action are awarded to Defendant, Cross-Defendant American Motorists Insurance Company.

The Amended Cross-claim involved herein stems from Count Two of the Complaint, where is clearly based upon Plaintiff's unseaworthiness claim for recovery against Defendant, Cross-Plaintiff Wallace Wooten. This is so reflected in the trial judge's findings of fact and conclusions of law, which were not challenged upon appeal to the United States Court of Appeals for the Fifth Circuit. Under the unseaworthiness doctrine, underlying negligence is not the basis of liability. It thereupon appears that the American Motorists Insurance Company personal liability insurance policy exclusion for any claims arising out of the Defendant Wallace Wooten's ownership, maintenance, operation or use of a sailboat

more than 26 feet in length applies to this matter and precludes coverage herein.

DONE AND ORDERED at Miami, Florida this 4th day of November, 1980.

/s/ _____
United States District Judge

cc:
Ronald Payne, Esq.
R. O. Holton, Jr., Esq.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

Case No. FL-75-301-CIV-PF

Margaret W. Ford, as Administratrix and Personal Representative of the Estate of James Edward Ford, Deceased; for the benefit of ***Margaret W. Ford***, ***Edward B. Ford*** and the Estate of ***James Edward Ford***, Deceased,

Plaintiffs,

v.

Wallace Wooten, individually, and as father and next friend of ***August Mark Wooten***, a minor, and ***American Motorists Insurance Company***,

Defendants.

COMPLAINT

July 1, 1975

COMES NOW the Plaintiffs, Margaret W. Ford, as Administratrix and Personal Representative of the Estate of James Edward Ford, Deceased; for the benefit of Margaret W. Ford, Edward B. Ford and the Estate of James Edward Ford, Deceased, and sue the Defendants, Wallace Wooten, individually, and as father and next friend of August Mark Wooten, a minor, and American Motorists Insurance Company, and allege:

1. This is a matter of admiralty and maritime jurisdiction, as hereinafter more fully appears.

2. This cause of action arises and is maintained by and under Title 46 U.S.C.A. §§ 761-768, otherwise known as the Wrongful Death on the High Seas Act.

3. For all times material to this Complaint, the Defendant, Wallace Wooten, individually, and as father and next friend of August Mark Wooten, a minor, was and is a resident of the State of Florida, and is sui juris.

4. For all times material to this Complaint the Defendant, American Motorists Insurance Company was and is an insurance company qualified and doing business in the State of Florida.

5. For all times material to this Complaint, James Edward Ford, Deceased, was a minor.

6. The Plaintiff, Margaret W. Ford, is the duly appointed, qualified and acting Administratrix of the Estate of James Edward Ford, Deceased, and brings this action for the benefit of the decedent's estate and for the benefit of decedent's survivors, pursuant to Title 46 U.S.C.A. §§ 761-768.

7. For all times material to this Complaint, Margaret W. Ford, and Edward B. Ford were the mother and father, respectively, of James Edward Ford, the deceased minor.

8. For all times material to this Complaint, the Defendant, American Motorists Insurance Company, provided liability insurance on behalf of Defendant, Wallace Wooten and August Mark Wooten, a minor, the proceeds of which would inure to the benefit of Plaintiffs, decedent's estate and decedent's survivors.

9. For all times material to this Complaint, the Defendant, Wallace Wooten, was owner and captain of a sailboat upon which such Defendant, his son, August Mark Wooten, a minor, and the Plaintiff's decedent,

James Edward Ford, a minor, sailed to the Grand Bahama Islands.

10. At the time of the death of Plaintiff's decedent, James Edward Ford, which is the subject matter of this Complaint, the aforementioned sailboat of Defendant, Wallace Wooten, was operating on the high seas, at a distance and course beyond one marine league from the shore of any state of the United States, or any of its several territories.

Count I

Negligence of Wallace Wooten as Temporary Guardian of James Edward Ford

Plaintiff restates and realleges paragraphs 1 through 10 above, and further alleges that:

11. Prior to July 24, 1974, Defendant, Wallace Wooten, contacted Plaintiff, Margaret W. Ford, and requested of her that her minor son, James Edward Ford, be allowed to accompany he and his son, August Mark Wooten, a minor, on a sailboating and skindiving trip on Defendants, Wallace Wooten's, sailboat to the Bahama Islands.

12. Plaintiff, Margaret W. Ford, agreed to allow her minor son to accompany Defendant, Wallace Wooten, and his son, August Mark Wooten, on the aforementioned boating trip into the Atlantic Ocean and allowed Defendant, Wallace Wooten, to assume temporary care, custody and control of her minor child for this purpose.

13. By requesting that the said minor, James Edward Ford, accompany him on said boating trip and by voluntarily assuming temporary custody of said minor, Defendant, Wallace Wooten, expressly and/or impliedly accepted responsibility for the supervision, care and

control and well-being of said minor for the duration of the trip.

14. For all times material to this Complaint, the Defendant, Wallace Wooten, had a duty to exercise reasonable care for the safety and well-being of the minor, James Edward Ford, and, in particular, under the circumstances herein owed a duty to Plaintiffs herein to exercise caution, care and control and to properly supervise the activities of the minor, James Edward Ford, to assure his well-being in connection with the aforementioned sailboating and skindiving trip into the Atlantic Ocean.

15. For all times material to this Complaint, the sailboat owned and operated by Defendant, Wallace Wooten, and utilized by the Defendant for the aforementioned boating trip into the Atlantic Ocean was a dangerous instrumentality.

16. On or about July 24, 1974, Defendant, Wallace Wooten, undertook the custody of the minor, James Edward Ford, Deceased, and with Defendant's minor son, August Mark Wooten, the three parties set off in Defendant, Wallace Wooten's, boat on said trip to the Bahamas, with the intention of engaging in activities which included sailing and skindiving.

17. Thereafter, from on or about July 24, 1974 to August 1, 1974, August Mark Wooten and James Edward Ford, Deceased, engaged in sailing and skindiving in various areas of the Atlantic Ocean in the vicinity of the Grand Bahama Islands within the care, custody and control of the Defendant, Wallace Wooten.

18. On or about August 1, 1974, Defendant, Wallace Wooten, breached his duty to provide care and supervision of the minor, James Edward Ford, by negligently

and carelessly abandoning said minor in foreign waters and returning to the United States, leaving said minor in foreign waters without care, control and supervision.

19. Defendant, Wallace Wooten, deliberately abandoned the minor child whose temporary custody he had voluntarily assumed and allowed said minor child to remain on his boat in the Atlantic Ocean with no adult supervision and in the company of August Mark Wooten, himself a minor, and further allowed James Edward Ford, Deceased, and his minor son to continue the dangerous activities of sailing and skindiving in the Atlantic Ocean without adult supervision and Defendant, Wallace Wooten, knew or should have known, that James Edward Ford, Deceased, and his minor son, August Mark Wooten, would continue engaging in such dangerous activities after he had abandoned his responsibilities and left the two minors without his continuing supervision.

20. Defendant, Wallace Wooten, in abandoning the minor child as set forth in paragraph 19 above, failed to instruct said minor and prohibit said minor from undertaking sailing or diving activities in his absence.

21. Defendant, Wallace Wooten, had a duty to exercise constant care and supervision of James Edward Ford, Deceased, as regards the activities engaged in in the Atlantic Ocean and breached said duty by not requiring that said minor return with him to the United States and further breached said duty by not returning at the earliest possible date to resume care and supervision of the minor, James Edward Ford, Deceased.

22. The aforementioned actions and omissions of Defendant, Wallace Wooten, were done negligently and carelessly and with a reckless disregard for the rights of the decedent, James Edward Ford, and the rights of decedent's survivors.

23. As a direct and proximate result of the negligent and careless abandonment of Defendant, Wallace Wooten's duty to exercise care and supervision of the minor, James Edward Ford, said minor, James Edward Ford, and August Mark Wooten, continued sailing and skindiving in the Atlantic Ocean after the departure of Defendant, Wallace Wooten, and on or about August 5, 1974, James Edward Ford and August Mark Wooten, sailed to the area of Marsh Harbor, Abaco, Grand Bahamas and there located an area of the Atlantic Ocean containing an unusual geographical phenomenon known as "boiling holes" or "roaring holes", an extremely dangerous area for skindiving.

24. Without the adult supervision of Defendant, Wallace Wooten, said minors commenced skindiving at the aforementioned location and at such time on or about August 5, 1974, as a result of Defendant, Wallace Wooten's breach of his duty to provide supervision as aforementioned, James Edward Ford lost his life by drowning while attempting to skindive in said "boiling hole".

25. As a direct and proximate result of the carelessness and negligence of Defendant, Wallace Wooten, as aforementioned, decedent's surviving parents, Margaret W. Ford and Edward B. Ford, have been caused great mental pain and suffering from the date of the death of their minor child to the present and will continue in the future to suffer great pain and mental suffering. Further, decedent's surviving parents, Margaret W. Ford and Edward B. Ford, have been deprived of the value of lost support and services from the date of Decedent's death to the present and will continue in the future to be deprived of the support and services of their minor child.

26. As a further direct and proximate result of the carelessness and negligence of the Defendant, Wallace Wooten, as aforementioned, the Estate of James Edward Ford, Deceased, has been deprived of the present value of the net accumulations that decedent would have made to his estate had he lived out his life. Further, decedent's estate has become liable for funeral expenses by reason of the death of decedent.

27. The death of James Edward Ford was caused by the wrongful act, neglect, default and carelessness of the Defendant, Wallace Wooten, and August Mark Wooten, his minor son, as hereinbefore delineated, and such act, neglect, default and carelessness was such as would have entitled James Edward Ford, if death had not ensued, to maintain an action against and to recover damages from the Defendants in respect thereof.

Count II

Negligence of Wallace Wooten as Captain of Sailing Vessel

Plaintiff restates and realleges paragraphs 1 through 27 above, and further alleges that:

28. As captain of the aforementioned sailboat, Defendant, Wallace Wooten, had a positive duty to supervise, control, direct, instruct and care for the crew of such sailing vessel when it was engaged in any function directly or indirectly relating to operation and maintenance of said vessel, including but not limited to, the procuring of food for crew.

29. On or about August 1, 1974, Defendant, Wallace Wooten, breached his duty, as captain of said sailboat, to supervise, control, direct, instruct and care for the crew of such sailing vessel when engaged in any function or operation upon the high seas or in foreign waters, by

negligently and carelessly abandoning said sailboat while it was in foreign waters, and returning to the United States; leaving said sailboat in the sole and complete possession, control and supervision of his untrained and unskilled crew, consisting of Plaintiffs' decedent, James Edward Ford, a minor, and Defendant, Wallace Wooten's minor son, August Mark Wooten.

30. As the result of the absence of the supervision and direction of Defendant, Wallace Wooten, captain of said sailboat, the crew thereof, consisting of August Mark Wooten, a minor, and Plaintiffs' decedent, James Edward Ford, similarly a minor, undertook the dangerous and hazardous sailing and skindiving activities to secure food as delineated in paragraphs 23 and 24 above; the direct and proximate result of negligence of Defendant, Wallace Wooten, was the death by drowning of James Edward Ford, while attempting to procure food for the crew.

WHEREFORE, Plaintiff demands judgment for compensatory damages against Wallace Wooten, individually, together with interest accrued from the date of the accident in question, costs, attorney's fees and such further relief as may be proper, and demands trial by jury of all issues triable as of right by jury.

Count III

Negligence of August Mark Wooten

Plaintiff restates and realleges paragraphs 1 through 27 above, and further alleges that:

31. The Defendant, Wallace Wooten, is the natural father and duly appointed, qualified and acting guardian and next friend of and for the person and property of August Mark Wooten.

32. When August Mark Wooten and Plaintiffs' decedent, James Edward Ford, reached the aforementioned

"boiling hole" or "roaring hole", and determined to go skindiving, said minors agre[illegible] to and utilized the "buddy system", a method employ[illegible]d by divers, wherein diving is done in pairs, and each member of each diving pair monitors all activities of his counterpart, his "buddy", as a safety precaution.

33. Thereafter, August Mark Wooten, negligently and carelessly failed to properly utilize the "buddy system" by failing to keep a proper look-out, and failed to exercise reasonable care to monitor the activities of James Edward Ford, Deceased, as the two minors were skindiving in the aforementioned "boiling hole".

34. As a direct and proximate result of the carelessness and negligence of August Mark Wooten, as alleged above, James Edward Ford lost his life by drowning while skindiving in said "boiling hole".

WHEREFORE, Plaintiff demands judgment for damages against August Mark Wooten, by and through his father and next friend, Wallace Wooten, together with interest accrued from the date of the accident in question, costs, attorney's fees and such further relief as may be proper, and demands trial by jury of all issues triable as of right by jury.

Count IV

Negligence of Wallace Wooten as Temporary Guardian of James Edward Ford – in the Alternative

Plaintiff restates and realleges paragraphs 3 through 5, and 7 through 27, and further alleges that:

35. This is an action for damages in excess of $2,500.00 for wrongful death pursuant to Florida Statutes 768.16 through 768.27, otherwise known as the Florida Wrongful Death Act.

36. The Plaintiff, Margaret W. Ford, is the duly appointed, qualified and acting Administratrix of the Estate of James Edward Ford, Deceased, and brings this action for the benefit of the decedent's estate and for the benefit of decedent's survivors, pursuant to Florida Statutes 768.16 through 768.27, otherwise known as the Florida Wrongful Death Act.

Count V

Negligence of Wallace Wooten as Captain of a Sailing Vessel

Plaintiff restates and realleges paragraphs 3 through 5; paragraphs 7 through 10; paragraphs 28 through 30; and, paragraphs 35 and 36.

WHEREFORE, Plaintiff demands judgment for compensatory and punitive damages against Wallace Wooten, individually, together with interest, costs, attorney's fees, and such further relief as may be proper, and Plaintiff demands trial by jury of all issues triable as of right by jury.

Count VI

Negligence of August Mark Wooten

Plaintiff restates and realleges paragraphs 3 through 5; paragraphs 7 through 10; and, paragraphs 31 through 36.

WHEREFORE, Plaintiff demands judgment for damages against August Mark Wooten, by and through his father and next friend Wallace Wooten, together with interest, costs, attorney's fees and such further relief as may be proper, and demands trial by jury of all issues triable as of right by jury.

/s/ Margaret W. Ford, as Administratrix
and Personal Representative of the
Estate of James Edward Ford,
deceased.

LAW OFFICES OF JON E. KRUPNICK, P.A.
Suite 1318
Landmark National Bank Building
One Financial Plaza
Fort Lauderdale, Florida 33394
Phone: 763-8181

By /s/ Jon E. Krupnick

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Case No. 76-2079

MARGARET W. FORD, *ET AL.*,
Plaintiffs-Appellees,

v.

WALLACE WOOTEN, *ETC.*,
Defendant-Appellant,

v.

AMERICAN MOTORISTS INSURANCE COMPANY,
Defendant-Appellee.

STIPULATION AND ORDER OF APPROVAL

The parties hereto, by and through their undersigned counsel, hereby stipulate and agree that the Trial Court, at the Pre-Trial Conference held on October 28, 1975, granted the Motion of Margaret W. Ford., etc., et al., to Amend the Complaint to include a claim for damages under the General Maritime Law, said Motion having been filed with the Court on October 20, 1975.

PYSZKA, KESSLER,
ADAMS & SOLOMON
100 Blackstone Building
707 Southeast Third Avenue
Fort Lauderdale, Florida 33316
Telephone: 463-8593

RONALD PAYNE, ESQUIRE
621 South Federal Highway
Suite 4
Fort Lauderdale, Florida 33301
Telephone: 462-0270

By: /s/
Attorneys for
Defendant/Appellee

By: /s/
Attorney for
Defendant/Appellant

ORDER

The Court hereby certifies that the Court did, in fact, grant the Motion of Margaret W. Ford, etc., et al., to Amend her Complaint to include a claim for damages under the General Maritime Law, as recited above.

[Signature]

September 15, 1976